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W.P.No.26472 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.26472 of 2016

1.A.Anbu
2.K.Radha
3.G.Saravana kumar
4.M.Balakrishnan
5.T.Chandrasekar

...Petitioners

Vs.

1.The Chief Secretary
to Government of Tamil Nadu,
Personnel and Administrative
Reforms (F) Department,
Fort St.George,
Chennai – 600 009.

2.The Principal Secretary
to Government of Tamil Nadu,
Highways and Small Ports (HM2)
Department, Secretariat,
Chennai – 600 009.

3.The Director General,
Highways Department,
Chepauk, Chennai – 600 005.

4.The Joint Director,
O/o.the Director General,
Highways Department,
Chepauk, Chennai – 600 005.

..Respondents



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Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to appoint the petitioners to the post of Junior Draughting Officer complying with G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006 and without reference to G.O.Ms.No.74 Personnel and Administrative (F) Department dated 27.06.2013.

For Petitioners : Mr.T.P.Prabakaran

For R1 to R4 : Mr.K.Karthik Jaganath
Government Advocate

ORDER

The Writ of Mandamus has been instituted to direct the respondents to appoint the petitioners to the post of Junior Draughting Officer in compliance with G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006 and without reference to G.O.Ms.No.74, Personnel and Administrative (F) Department dated 27.06.2013.

2. The petitioners state that they were engaged as daily wage employees as Junior Draughting Officers and all the petitioners are the holders of Diploma in Civil Engineering. The third respondent issued Recruitment Notification on 26.10.2015, calling for applications from the



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Diploma holders in Civil Engineering for recruitment to the post of Junior

Draughting Officer in Highways Department of the Government of Tamil

Nadu. The petitioners submitted their respective applications pursuant to the

Notification. They have stated that they are already working in the

Highways Department as daily wage employees and they have completed 10

years of temporary services and therefore, they are to be considered for

appointment based on G.O.Ms.No.22, P & AR Department dated

28.02.2006 for appointment to the post of Junior Draughting Officer.

However, the case of the writ petitioners were not considered, since they

were over aged. Thus, they have filed the writ petition, stating that the

subsequent Government Order issued in G.O.Ms.No.74, P & R Department

dated 27.06.2013, superseding the Government order issued in

G.O.Ms.No.22, P & AR Department dated 28.02.2006 cannot be

implemented as far as the case of the writ petitioners is concerned.

3. The learned counsel for the writ petitioners made a submission that the Government imposed several conditions in G.O.Ms.No.74 dated 27.06.2013 and the said Government order cannot be implemented retrospectively, so as to affect the prospects of the petitioner to secure



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appointment to the post of Junior Draughting Officer pursuant to the earlier Government order issued in G.O.Ms.No.22 dated 28.02.2006.

4. In support of the said contention, the learned counsel for the petitioners relied on the judgment of the Hon'ble Division Bench dated 10.01.2017 in W.A.(MD).No.1127 of 2016, wherein the Division Bench held that G.O.Ms.No.74 dated 27.06.2013 has to be implemented prospectively. The said judgment has been confirmed by the Hon'ble Supreme court of India in S.L.P.(C).No.7494 of 2017 dated 20.03.2017. Thus, the authorities have failed to consider the claim of the writ petitioners for appointment based on G.O.Ms.No.22 dated 28.02.2006. However, they are attempting to implement the Government order issued in G.O.Ms.No.74, P & R Department dated 27.06.2013, so as to reject the case of the writ petitioners for appointment to the post of Junior Draughting Officer. Thus, the petitioners are constrained to move the present writ petition.

5. The learned Government Advocate appearing on behalf of the respondents objected the said contentions by stating that regarding the Recruitment Notification of the year 2015, the petitioners had filed writ

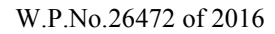


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petitions before this Court in W.P.No.37987 of 2015 and other batch of writ petitions were filed. The prayer sought for is to relax the age limit prescribed in the recruitment notification. Those writ petitions were dismissed by this Court. Therefore, the petitioners were not allowed to participate in the further process of selection and subsequently, they filed the present writ petition, seeking appointment to the post of Junior Draughting Officer based on G.O.Ms.No.22 dated 28.02.006, which was already superseded by the Government through another Government order issued in G.O.Ms.No.74 dated 27.06.2013.

6. The petitioners were engaged as daily wage employees and therefore, they are not entitled for regularization or permanent absorption. The initial appointment of the writ petitioners were not made in accordance with the recruitment rules in force. Thus, the appointment of the writ petitioners were irregular and therefore, they cannot seek regularization in the sanctioned post of Junior Draughting Officer.

7. Considering the arguments as advanced between the respective learned counsels appearing on behalf of the parties to the *lis*, it is not in



8. Question arises, whether G.O.Ms.No.22, P & AR Department dated 28.02.2006 can be applied in the case of the writ petitioners. The said Government order issued in G.O.Ms.No.22 dated 28.02.2006 was superseded through G.O.Ms.No.74, P & R Department dated 27.06.2013. Therefore, the said G.O.Ms.No.22 dated 28.02.2006 is not in force and it cannot be applied at all.

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made strictly in accordance with the rules in force. Equal opportunity in public employment is the constitutional mandate. The equality clause enunciated in the Constitution at no circumstances be diluted, infringing the Fundamental Rights of all other citizen, who all are aspiring to secure public employment through open competitive process. The Hon'ble Supreme Court has emphatically held that irregular and illegal appointments cannot be regularized nor persons, who were appointed through backdoor cannot seek the benefit of regular appointment, regularization or permanent absorption. In the event of regularizing the irregular and illegal appointments, or appointing persons in violation of the recruitment rules, the same would result in infringement of the Constitutional rights of lakh and lakh of youth of this great Nation and thus, the unconstitutionality in the matter of public employments must be stopped forthwith. In the context of the principles laid down by the Constitution Bench, in paragraph 53 of the judgment in '*Uma Devi's case'* (cited *supra*), the Constitution Bench granted permission to complete the process in respect of the pending proposals during the relevant point of time. However, the Hon'ble Supreme Court of India has never allowed that the irregularity in this regard must be continued in perpetuity. The one time permission granted by the Hon'ble Supreme Court is restricted



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only in respect of the proposals, which were pending during the relevant point of time, when the judgment was delivered and after the judgment, the principles laid down by the Constitution Bench became the Law of the land and binding on all the authorities and the Courts across the country.

10. In paragraph 54 of the judgment in '*Uma Devi's case*' (*cited supra*), the Constitution Bench in unequivocal terms held that any judgment of any Court or the Government or its orders running counter to the principles laid down by the Constitution Bench have denuded to loose its status as precedent and those judgments or Government orders cannot be followed for the purpose of appointment, regularization or permanent absorption. Thus, any Government order in the matter of regularization, permanent absorption or appointment is to be tested with reference to the principles laid down by the Constitution Bench of the Hon'ble Supreme Court of India in the case of '*Uma Devi*' (*cited supra*)

11. In the case of *State of Rajasthan and others Vs. Daya Lal and others* reported in (2011) 2 SCC 429, the Hon'ble Supreme Court held that “the High Courts, in exercising power under Article 226 of the Constitution



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will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularization of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.'

12. Mere continuance of service of a temporary or ad hoc or daily wage employee, under cover of some interim orders of the Court, would not confer upon him any right to be absorbed into service as such absorption would result in violation of the recruitment rules in force and therefore, all appointments are to be made only by following the procedures as contemplated under the recruitment rules in force.



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13. In the present case, the writ petitioners were engaged as daily wage employees and continuing as such. At the time of appointment, knowing the terms and conditions, the petitioners accepted the daily wage employment and therefore, now they cannot turn around and claim the benefit of regular appointment, regularization or permanent absorption, which is in violation of the recruitment rules in force. Once the terms and conditions of the appointments are agreed between the employer and the employee, then the employee cannot seek permanent absorption or appointment in violation of the recruitment rules and in the event of such consideration either by the authorities or by the Courts, the same would result in unconstitutionality and infringe the rights of large number of citizen, who all are longing to secure public employment through open competitive process.

14. The very principles laid down indicates that backdoor appointments are to be stopped forthwith. The practice of entering into public services through backdoor and thereafter, claiming appointment in a sanctioned post or regularization or permanent absorption if allowed, the



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repercussion would be disastrous and the equality clause enunciated is directly violated. The Courts in this regard are not expected to show any misplaced sympathy merely based on the services rendered by these employees as daily wage employees. Such misplaced sympathy would result in violation of equality clause enunciated under Article 14 of the Constitution of India. Thus, the Government orders if at all issued, which all are running counter to the principles laid down by the Constitution Bench in *Uma devi's case (cited supra)*, such Government orders cannot be followed by the authorities competent and the law laid down by the Constitution Bench became binding on all the authorities and the Courts. Thus, the Government orders issued are also to be implemented with reference to the principles settled by the Hon'ble Supreme Court of India.

15. The main contention raised in the present writ petition is that the Government order issued in G.O.Ms.No.74 dated 27.06.2013 cannot be implemented retrospectively, so as to affect the prospects of the petitioner for appointment to the post of Junior Draughting Officer based on G.O.Ms.No.22 dated 28.02.2006. The issue became irrelevant, in view of the fact that the Government order issued in G.O.Ms.No.22 dated



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28.02.2006 was superseded and based on the said superseded order, no one can claim the benefit of appointment, regularization and permanent absorption. Once the Government order has been superseded, the subsequent Government order issued in G.O.Ms.No.74 dated 27.06.2013 came into force and any proposal, which is pending or which is to be submitted, the said proposals are to be considered only with reference to the order issued in G.O.Ms.No.74 dated 27.06.2013.

16. Even in respect of the said Government order issued in G.O.Ms.No.74 dated 27.06.2013, the backdoor appointments or illegal or irregular appointments at no circumstances can be a basis for providing appointment, regularization or permanent absorption. Thus, G.O.Ms.No.74 dated 27.06.2013 must also be implemented, keeping in mind the principles settled by the Hon'ble Supreme court of India.

17. At the outset, backdoor appointments can never be regularized. Persons appointed through backdoor must be allowed to go out from the door through which they have entered into public service and therefore, this Court is of the considered opinion that the petitioners, who were engaged as



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daily wage employees are not entitled for appointment to the post of Junior Draughting Officer in a sanctioned post and they are bound to participate in the process of selection if they are otherwise qualified for securing permanent employment.

18. Thus, this Court is not inclined to consider the relief as such sought for in the present writ petition and accordingly, the writ petition stands dismissed. No costs.

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Index : Yes
Speaking order: Yes
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S.M.SUBRAMANIAM, J.

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